

The Honorable John C Coughenour

~~OCTO JUDGE DJ~~

FILED _____ ENTERED _____
LODGED _____ RECEIVED _____

JAN 24 2002 DJ

AT SEATTLE
CLERK U S DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
BY _____ DEPUTY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

RUTH TREVINO LOPEZ, individually
as surviving spouse, and as personal
representative of the ESTATE OF BLAS
ANTONIO LOPEZ, and beneficiaries,
heirs, and surviving children BLAS
LOPEZ, JR , EDGAR LOPEZ,
YULIKSA LOPEZ and ALEXANDER
LOPEZ,

Plaintiffs,

vs

UNION PACIFIC RAILROAD
COMPANY and BOISE CASCADE
CORPORATION,

Defendants

NO C00-0311C

DECLARATION OF NICHOLAS P
SCARPELLI, JR IN SUPPORT OF
PLAINTIFFS' THIRD MOTION FOR
SANCTIONS & SUPPLEMENTAL
EVIDENCE RE PENDING MOTIONS FOR
SANCTIONS

DECLARATION OF NICHOLAS P
SCARPELLI, JR , IN SUPPORT OF
PLAINTIFFS' THIRD MOTION FOR
SANCTIONS & SUPPLEMENTAL EVIDENCE
RE PENDING MOTIONS FOR SANCTIONS - 1

**CARNEY
BADLEY
SMITH &
SPELLMAN**

LAW OFFICES
A PROFESSIONAL SERVICE CORPORATION
2200 BANK OF AMERICA TOWER
700 FIFTH AVENUE, SUITE 5800
SEATTLE, WA 98104-5017
FAX (206) 467-8215
TEL (206) 622-8020

191

Nicholas P Scarpelli, Jr , declares and states

1 I am over 18 years of age and competent to give the testimony herein

2 I am one of the attorneys for Plaintiffs Lopez in the above referenced matter

3 Attached hereto are true and accurate copies of the following exhibits

4
5
6 1 Excerpts from the deposition transcript of Charles Harrison, taken January 18,
7 2002

8 2 Copy of the "chain of custody envelope" with the disk from UP Locomotive
9 9123

10 3 Excerpts from the deposition transcript of Brian Heikkila, taken January 4,
11 2002

12 4 Excerpts from the deposition transcript of Robert Ryan, Vol II, taken on
13 January 14, 2002

14
15 I declare under the penalty of perjury under the laws of the State of Washington that the
16 foregoing is a true and correct statement.

17 DATED this 24th day of January, 2002 at Seattle, Washington

18
19
20 By 
21 Nicholas P Scarpelli, Jr

22
23
24
25
DECLARATION OF NICHOLAS P
SCARPELLI, JR , IN SUPPORT OF
PLAINTIFFS' THIRD MOTION FOR
SANCTIONS & SUPPLEMENTAL EVIDENCE
RE PENDING MOTIONS FOR SANCTIONS - 2

CARNEY
BADLEY
SMITH &
SPELLMAN

LAW OFFICES
A PROFESSIONAL SERVICE CORPORATION
2200 BANK OF AMERICA TOWER
700 FIFTH AVENUE, SUITE 5800
SEATTLE, WA 98104-5017
FAX (206) 467-8215
TEL (206) 622-8020

EXHIBIT 1

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

RUTH TREVINO LOPEZ, individually as
surviving spouse, and as personal
representative of the ESTATE OF
BLAS ANTONIO LOPEZ, and
beneficiaries, heirs, and surviving
children BLAS LOPEZ, JR., EDGAR
LOPEZ, YULISA LOPEZ and ALEXANDER
LOPEZ,

Plaintiffs,

vs.

UNION PACIFIC RAILROAD COMPANY, and
BOISE CASCADE CORPORATION,
Defendants.

No. C00-0311C

30(b)6 DEPOSITION OF
CHARLES HARRISON

LARRY MASUDA,

Plaintiff,

vs.

UNION PACIFIC RAILROAD COMPANY,
BOISE CASCADE CORPORATION, INEZ
LOPEZ and JANE DOE LOPEZ and their
marital community; and RUTH TREVINO
LOPEZ, individually and as personal
representative of the ESTATE OF BLAS
ANTONIO LOPEZ,

Defendants.

No. C00-445C

Page 10

1 also understand a certain amount of preliminary
2 information is necessary, but I also understand that
3 Mr. Wackerbarth has made very clear to you that his
4 testimony, today at least, is going to be limited to
5 the subject of your 30(b)6. So I just want to make
6 sure we're all on the same page before you get too far
7 afield.

8 Q May I see your day planner?

9 A. (Witness provides two pages.)

10 Q. Where is the September 27th, 1997, entry?

11 A. It's in my office. I didn't bring that part.

12 Q. Did you look at September 27th, 1997?

13 A. Yes.

14 Q. What does it say?

15 A. I was on vacation.

16 Q. All right, let's just keep these here for the time
17 being.

18 Do the Union Pacific rules, company rules, require
19 that all event recorders be downloaded after crossing
20 accidents?

21 A. Yes

22 Q. And likewise, do you understand that the FRA law
23 requires that all data event recorders be downloaded
24 after crossing accidents?

25 A. Yes.

Page 12

1 planner that says, "Download UP 9184 at Page," and you
2 didn't download it?

3 A All that does is tells me that on that day I went to
4 Page to download 9184

5 Q And could a fair reading of that be that you did in
6 fact download 9184?

7 A I don't remember if I did or not

8 Q You can't remember one way or the other?

9 A No.

10 Q Even though it says there, "Download UP 9184," on your
11 day planner.

12 A. Yes

13 Q So what have you done to determine whether you did
14 download UP Engine 9184 event recorder or whether
15 anybody else downloaded the 9184 event recorder?

16 A I checked the files that I had on Engineer L.I. Masuda.

17 Q Pardon me?

18 A I checked the files that I had on L.I. Masuda, the
19 engineer.

20 Q Larry Masuda?

21 A Yes.

22 Q All right.

23 A To see if I had a record of 9184 in his file, and I did
24 not.

25 Q A record of 9184? What do you mean "a record"?

Page 11

1 Q Did you download the event recorder on Locomotive 9184?

2 A To the best of my recollection, I don't know if I did
3 or not.

4 Q You have given us a page from your Daily Record of
5 Events September 29th, 1997, that says, it's written
6 here, "Download UP 9184 at Page." Have I read that
7 correctly?

8 A Yes

9 Q Is that in your writing?

10 A Yes, it is.

11 Q When did you make that notation?

12 A. I would say probably on the 29th

13 Q Of September 1997?

14 A. Yes

15 Q So why is it that you don't know whether you downloaded
16 the event recorder then from Locomotive 9184?

17 A It was in 1997

18 Q Yes Does that refresh your recollection, looking at
19 your day planner?

20 A It refreshes my recollection that I went out there to
21 download 9184

22 Q And does it refresh your recollection that you did in
23 fact download 9184?

24 A No, it doesn't.

25 Q Can you explain how an entry could be on your day

Page 13

1 A Just a printout of a download. And I checked the hard
2 drive on my laptop that I have, and I did not find any
3 record of 9184 I didn't have this laptop in '97

4 Q Did you have a different laptop in '97?

5 A Yes, I did.

6 Q What type of a laptop did you have in 1997, at the time
7 of this accident?

8 A If I remember right, it was an IBM Think Pad

9 Q Think Pad?

10 A. Yes, that's the type of laptop

11 Q What kind do you have now?

12 A Now I have a Compaq.

13 Q When you switched from the Think Pad to the Compaq --
14 well, let me ask you this, when did you start using a
15 Compaq in your work with Union Pacific?

16 A Oh, I don't remember when we switched It would be a
17 guess

18 Q Well, it wouldn't be that much of a guess, would it?
19 It would be sometime between September of '97 and
20 today

21 A Yes

22 Q Can you narrow it down? Was it last week?

23 A It's been over a year since I've been using this
24 Compaq

25 Q Can you get any closer than "a year"?

4 (Pages 10 to 13)

Page 14

1 A. Probably closer to two years.
 2 Q All right When you switched from the Think Pad to the
 3 Compaq, didn't you transfer information onto the memory
 4 of the Compaq?
 5 A. No.
 6 Q You didn't?
 7 A No
 8 Q What did you do with the information that was in the
 9 IBM Think Pad?
 10 A When we get these new laptop computers they come to us
 11 loaded with the software that we need for our job and
 12 we just turn the other ones in
 13 Q Well, so who do you give the other ones to?
 14 A. Somebody in Omaha. It goes into -- I don't know
 15 exactly where it goes in Omaha.
 16 Q. When you say "Omaha," you're talking about Union
 17 Pacific's headquarters?
 18 A. Yes.
 19 Q. So what you're telling us is that no information that
 20 was captured in the memory of the IBM Think Pad was
 21 transferred to the memory of the Compaq when you
 22 started using the Compaq.
 23 A. That's correct
 24 Q And conceivably, had you downloaded Engine Locomotive
 25 9184, as your calendar reflects you did on September

Page 15

1 the 29th, 1997, that would have been in the memory of
 2 the IBM Think Pad
 3 A. Not necessarily.
 4 Q. I know not necessarily, but it could have been --
 5 A. Yes
 6 Q. -- on the IBM Think Pad, right?
 7 A. Possibility, yes.
 8 Q. All right, let's assume that you did download the UP
 9 9184 locomotive event recorder on September 29th, 1997
 10 What would you have done?
 11 A I would have downloaded to a diskette --
 12 Q So let me --
 13 A. -- at that time
 14 Q Do I understand correctly that you would have taken
 15 your IBM Think Pad onto the locomotive --
 16 A Yes.
 17 Q -- into the cab portion of the locomotive, correct?
 18 A. Yes
 19 Q. You would have plugged it into the event recorder,
 20 correct?
 21 A. Yes
 22 Q. You would have then downloaded the information on the
 23 event recorder on 9184 onto a disk that was in your IBM
 24 Think Pad, correct?
 25 A. Yes

Page 16

1 Q You would have then taken that disk out of your IBM
 2 Think Pad and written on it the information, correct?
 3 A Yes
 4 Q And then you would have stored that in an envelope
 5 prepared by, or a form envelope that's used by Union
 6 Pacific to store and create a chain of custody for
 7 event recorder information, correct?
 8 A Yes
 9 Q Now, when you download it, when you download event
 10 recorder information on a locomotive, do you have your
 11 screen up so that you see information as it's
 12 downloading?
 13 A No, I do not.
 14 Q You can't see what's being downloaded?
 15 A No.
 16 Q Do you see what's being downloaded?
 17 A I have to go into a different program and analyze the
 18 -- it's a tape analysis program
 19 Q Do you do that routinely when you download?
 20 A Yes, I do.
 21 Q So if you downloaded the event recorder off of
 22 Locomotive 9184 on September 29th, 1997, like your
 23 calendar says you did, you would have looked at that
 24 information on your screen at some point in time while
 25 you were on the locomotive or later.

Page 17

1 A. You're asking me to assume that I got the download
 2 or --
 3 Q Yes, yes, assume you did You would have looked at the
 4 information that was on the download, right?
 5 A Yes
 6 Q And would you have looked at it in the locomotive or
 7 someplace else?
 8 A Probably in the locomotive.
 9 Q And would that information be similar to that
 10 (indicating document), is that how it's downloaded?
 11 A Yes
 12 MR. SCARPELLI: All right, let's mark this as
 13 Exhibit 1
 14 (Off the record)
 15 (Exhibit Nos 1A, 1B, and 2 were marked)
 16 Q Mr Harrison, will you identify what's been marked as
 17 Exhibit 1 to your deposition 1A and 1B, excuse me
 18 A It's pages out of my personal day planner
 19 Q For 19 --
 20 A For September 29, 1997
 21 Q Thank you. And would you identify what has been marked
 22 as Exhibit No 2
 23 A It appears to be an analysis of a Pulse download off of
 24 UP 9123
 25 Q And you understand that was the lead locomotive,

5 (Pages 14 to 17)

Page 18

1 correct, in this accident?
 2 A Yes
 3 Q Now, my question was, before we marked Exhibit 2, if
 4 you downloaded the UP 9184 event recorder, as I
 5 understand it you would have printed out on your screen
 6 -- or I shouldn't say "print out" -- appearing on your
 7 screen and perhaps you would have printed out
 8 something, a graph like is represented in Exhibit No. 2
 9 for Locomotive 9123, is that correct?
 10 A Yes.
 11 Q. Have you ever not printed out such a graph when you've
 12 downloaded?
 13 A. Yes
 14 Q What percentage of times do you think you don't print
 15 out such a graph when you're downloading? I mean like
 16 if you've done it 500 times, are we talking about 99
 17 percent of the time you would print out the graph when
 18 you download?
 19 A. Yes, that would be fair.
 20 Q. All right, that's close enough for me So I'm clear,
 21 99 percent of the time you would print it out.
 22 A Yes
 23 Q All right. If you did the download, as your calendar
 24 reflects that you did on Exhibits 1A and 1B, would you
 25 have measured the wheel size?

Page 19

1 A Yes.
 2 Q Do you have any recollection as you sit here today
 3 about measuring the wheel size?
 4 A. I don't recall, but it is standard operating procedure
 5 to measure it.
 6 Q That's not my question My question is, do you have
 7 any recollection as you sit here today of measuring the
 8 wheel size on Locomotive 9184?
 9 A No
 10 Q. Which wheel would you have measured on Locomotive 9184?
 11 A. On that type of locomotive, I can't remember whether
 12 it's L1 or L3 I look and see which axle has a cable
 13 going to it.
 14 Q When you say "that type of locomotive," you mean a
 15 GE-8? Was that a GE-8?
 16 A Yes
 17 Q And Locomotive 9123 is a GE-8, too, isn't it?
 18 A Yes
 19 Q So if the cable's on the left front wheel of 9123, more
 20 likely than not it would be on the left front wheel of
 21 9184?
 22 A. Yeah It's the same type of locomotive
 23 Q And the same type of wheel
 24 A Yes
 25 Q All right. so you would have gone and measured what's

Page 20

1 called the witness readings on the wheel?
 2 A Yes Witness groove
 3 Q The witness groove?
 4 A Uh-huh.
 5 Q All right. And the witness groove would have told you
 6 the wheel dimension, correct?
 7 A Yes It measures the tread on the wheel.
 8 Q That's the only one you're interested in for purposes
 9 of the download of the event recorder, correct?
 10 A Yes
 11 Q. Because the wheel size tells you the speed, does it
 12 not?
 13 A. It's figured into the program, yes.
 14 Q. That in fact determines the speed in the program,
 15 correct?
 16 A. Yes.
 17 Q That's why it has to be an accurate reading, correct?
 18 A That's correct.
 19 Q That's why you measure down to a sixteenth, correct?
 20 A Yes.
 21 Q And you've got a caliper specifically designed for
 22 that?
 23 A I have a wheel gauge, yes.
 24 Q But you can't recall doing that
 25 A No, I can't.

Page 21

1 Q And I take it, then, you can't remember as you sit here
 2 today ever determining what the speed was that was
 3 recorded on Locomotive 9184 when you downloaded it as
 4 reflected in your DayTimer of September the 29th, 1997.
 5 A Yes.
 6 Q. Is that true?
 7 A Yes
 8 Q You cannot recall?
 9 A I cannot recall
 10 Q Do you remember anybody who was with you on September
 11 29th, 1997, when you downloaded it?
 12 A Yes
 13 Q Who?
 14 A My wife
 15 Q Does she remember?
 16 A She remembers going out to Page with me
 17 Q She remembers going out to Page with you on September
 18 29th, 1997?
 19 A Yes
 20 Q Does she remember you downloading it?
 21 A No
 22 Q Would there be someone else available to download the
 23 9184 on the night of the accident?
 24 A I don't know if there was or not
 25 Q Somebody apparently downloaded 9123 on the night of the

6 (Pages 18 to 21)

Page 22

1 accident, right?
 2 A Yes
 3 Q What would prevent that same person from downloading
 4 9184 on the same date of the accident?
 5 A I don't know.
 6 Q. That could be done, could it not?
 7 A. Could be, yes
 8 Q. In fact, you've done that before, have you not?
 9 A. Yes, I have
 10 Q. Crossing accident, two locomotives in the consist,
 11 download them both, stick both floppy disks in an
 12 envelope and establish a chain of custody, correct?
 13 A. Correct.
 14 Q That's a standard practice, isn't it?
 15 A Yes, it is.
 16 MR. SCARPELLI: Let's mark this one.
 17 (Exhibit No 3 was marked)
 18 Q. Do you recognize what has been marked as Exhibit No. 3?
 19 A. Yes.
 20 Q. What is Exhibit No 3?
 21 A. It appears to be a copy of a Chain of Custody envelope.
 22 Q. This would be a copy of the printing and some writing
 23 on a Chain of Custody envelope to keep event recorders,
 24 correct? Event recorder disks
 25 A Yes, a disk.

Page 23

1 Q. And this one that I've had marked as Exhibit 3
 2 indicates that it is the Chain of Custody envelope for
 3 Locomotive -- well, it doesn't have the locomotive
 4 number, but it has the train symbol number, the Market
 5 27, right?
 6 A. MHKET 27, correct.
 7 Q. That is, as you understand, the train involved in the
 8 Lopez collision and death, correct?
 9 A. Yes
 10 Q. And this would appear to contain, if this is accurate,
 11 the event recorder disk for the first locomotive,
 12 correct?
 13 A. Yes.
 14 Q. Have you seen Exhibit 3 before today's date?
 15 You've got it in front of you.
 16 A. Oh, yes.
 17 Q. Have you seen it before today's date?
 18 A. Yes.
 19 Q. All right. And this is, it's Form 20150, used by Union
 20 Pacific in all train or locomotive-related employee
 21 deaths, personal injuries, accidents involving
 22 nonrailroad individuals, and crossing accidents, right?
 23 A. Yes
 24 Q. Do you keep these envelopes in your truck, in your
 25 company vehicle?

Page 24

1 A I keep them in the office, my office.
 2 Q So that's what you utilize to store these event
 3 recorder disks, correct?
 4 A Yes I put them in this envelope; then I turn it over
 5 to the claims department
 6 Q And the claims department who was handling this case,
 7 the gentleman's name is Stan Fetterhoff, right?
 8 A Yes.
 9 Q So if you downloaded Locomotive 9184, you would have
 10 put that disk with the downloaded information in an
 11 envelope similar to Exhibit No. 3, correct?
 12 A. Yes.
 13 Q And then you would have signed it, indicated the wheel
 14 position, wheel gauge measurement, date and time of
 15 recovery, and sealed it and delivered it to Mr
 16 Fetterhoff?
 17 A Yes, that's correct.
 18 Q And then he would have to sign off on it, indicating
 19 when he got it, et cetera, right?
 20 A Yes.
 21 Q How would it get from Page in an envelope to Mr
 22 Fetterhoff?
 23 A. I would have transported it
 24 Q. You would have hand-delivered it?
 25 A Yes.

Page 25

1 Q Okay, so that much care is taken, as a matter of
 2 procedure, with these event disks. You hand deliver
 3 them to the person who has requested the disk
 4 A Yes
 5 Q So then would it be fair to say that Mr McCrow --
 6 well, let's read the chain of custody on Exhibit No 3
 7 It was recovered, this disk from 9123 was
 8 recovered by Mr. Bebout, right?
 9 MR. BEARD: Object to the form of the
 10 question, lack of foundation
 11 Q. Go ahead
 12 MR. SCARPELLI: I'm just asking him what the
 13 form says.
 14 MR. BEARD: Okay
 15 Q What does the form, Exhibit 3, indicate? Who recovered
 16 the disk from the lead locomotive?
 17 A Richard Bebout.
 18 Q B-E-B-O-U-T, I believe
 19 All right And then there's a signature below
 20 that on the tape cover. It looks like there's a
 21 signature I can't make out, but then underneath that it
 22 says, "John McCrow," or McCrow, do you see that?
 23 A Yes, I do.
 24 Q Does that mean Bebout gave it to McCrow, or can you
 25 tell by looking at this?

7 (Pages 22 to 25)

EXHIBIT 2

(c
as
12:
68:

FORM 20150

NOTE

For train or locomotive-related employee deaths, personal injuries, including other accidents involving non-railroad individuals, crossing accidents, and accidents involving pedestrians and trespassers the event recorder data must be taken into custody as soon as practical. Locomotive wheels must be measured.

**LOCOMOTIVE AND EVENT
RECORDER EVIDENCE**

Individual Requesting Information

Stan FetterhoffTrain Symbol MHKET 27Type of Incident Crossing Accident
(Crossing accident, Derailment, etc.)Sun Harbor Wash.
Location of Crossing Accident, Derailment, Etc.Date of Incident Sept 27, 1997Date and Time of Recovery 27 Sept 1997Apprx. 2100Location of Recovery Sun Harbor Wash.

Witnesses Present During Recovery

R. Bebout Elk.Tom Cunha Mach.Wheel Position 1Wheel Gage Measurements 40.90

Date Wheel Gage Accuracy Last Verified

Recovered By Richard Bebout

(Print)

Signature (on tape cover) John McCrow**CHAIN OF CUSTODY**

Received from

MHKET 27

(Locomotive Symbol & Number)

By

R. BEBOUT

Date

9/27/97

Time

2100

AM PM

Received from

By

Date

Time

AM PM

Received from

J. McCrow

By

S.W. FETTERHOFF

Date

10/2/97

Time

1230

AM PM

Received from

By

Date

Time

AM PM

Received from

By

Date

Time

AM PM

Received from

By

Date

Time

AM PM

UP004425

EXHIBIT 3

DEPOSITION OF BRIAN HEIKKILA 1-4-02

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF THURSTON

RUTH TREVINO LOPEZ,
individually, as surviving
spouse, and as personal
representative of the ESTATE
OF BLAS ANTONIO LOPEZ, and as
Guardian of the
beneficiaries, heirs and
surviving children BLAS
LOPEZ, JR., EDGAR LOPEZ,
YULISA LOPEZ and ALEXANDER
LOPEZ,

Plaintiff,

vs.

00 2 02115 9

WASHINGTON STATE DEPARTMENT
OF TRANSPORTATION; UNION
PACIFIC RAILROAD COMPANY; and
BOISE CASCADE CORPORATION,

Defendants.

DEPOSITION UPON ORAL EXAMINATION OF BRIAN HEIKKILA

JANUARY 4, 2002

SEATTLE, WASHINGTON

APPEARANCES:

FOR THE PLAINTIFF:

NICHOLAS P. SCARPELLI
CARNEY, BADLEY, SMITH AND
SPELLMAN
700 FIFTH AVENUE
SUITE 5800
SEATTLE, WASHINGTON 98104

FOR DEFENDANT UPRR:

TIMOTHY D. WACKERBARTH
LANE, POWELL, SPEARS, LUBERSKY
1420 FIFTH AVENUE
SUITE 4100
SEATTLE, WASHINGTON 98101

FOR DEFENDANT BOISE:

DEAN ZONA
MINNICK-HAYNER
249 WEST ALDER
WALLA WALLA, WASHINGTON 99362

FOR CROSSCLAIM
DEFENDANTS LOPEZ;

JAY E. LEIPHAM
RICHTER-WIMBERLEY
7601 WEST RIVERSIDE AVENUE
SUITE 1300
SPOKANE, WASHINGTON 99201

FOR PLAINTIFFS MASUDA
AND SEWELL
(RELATED ACTION):

GEORGE A. THORNTON
HUNEGS, STONE, LENEAVE, KVAS
AND THORNTON
1000 SECOND AVENUE
SUITE 3310
SEATTLE, WASHINGTON 98104

REPORTED BY:

CARRIE J. DEHUFF, RPR, CSR

JANUARY 4, 2002

SEATTLE, WASHINGTON

EXAMINATION INDEX

CONDUCTED BY:

PAGE

CONT.

MR. SCARPELLI

4

EXHIBIT INDEX

NUM	DESCRIPTION	MARKED
1	10/29/01 HEIKKILA/WACKERBARTH LETTER	8
2	WITNESS' HANDWRITTEN NOTES (1 PAGE)	53
3	LOPEZ VS. UP TABLE OF CONTENTS	53
4	WITNESS' HANDWRITTEN NOTES (8 PAGES)	53
5	EVENT RECORDER DATA	53
6	UNION PACIFIC SYSTEM TIMETABLE	53

BE IT REMEMBERED, that on Friday,

January 4, 2002, at 9:53 a.m., at 1420 Fifth Avenue,
Seattle, Washington, the deposition upon oral
examination of BRIAN HEIKKILA was heard by
CARRIE J. DEHUFF, Notary Public in and for the State of
Washington;

WHEREUPON, the following proceedings were
had; to-wit:

BRIAN HEIKKILA, being first duly sworn by the
Notary Public to tell the
truth, testified as follows:

EXAMINATION

BY MR. SCARPELLI:

Q Would you state your name, please.

A Brian Heikkila.

Q What's your address?

A 566 Metalist Way. You want my home address or my
business address?

Q Business address is fine.

A 3 North Clarendon Avenue in Avondale Estates, Georgia,
and I've left a card here, business card.

Q And by whom are you employed?

A Rail Sciences.

Q How long have you been employed by Rail Sciences?

A Since June of 2000.

Q And what business is Rail Sciences in?

DEPOSITION OF BRIAN HEIKKILA - 1-4-02

HEIKKILA BY SCARPELLI

41

- 1 using the other physical evidence in the case including
- 2 the train consist and the police survey.
- 3 Q Tell me how you arrive at that point of impact using
- 4 whatever materials you did.
- 5 A Okay, and that's -- It would be helpful to look at
- 6 another element of this particular Exhibit Number 5,
- 7 which would be Page Number 4.
- 8 Q So, tell us how you arrived then at the figure you did.
- 9 A Okay, first of all we know that the -- from the train
- 10 consist, and that's -- we have a copy of the train
- 11 consist and we broke that out. We had block totals in
- 12 the consist, but we developed a spread sheet for all the
- 13 cars and locomotives in the train, and that's on Page 5
- 14 for ready reference. We had photographic evidence of
- 15 the car that was stopped at the crossing immediately
- 16 north of the crossing, and that's marked on Page 5 also
- 17 as TTZX86123. We know that the length from there, from
- 18 that car to the, the front of the 9184, again from the
- 19 consist is 1,659 feet. We also know from the police
- 20 survey -- or from the survey that was done that the
- 21 distance between the two locomotives, the separation
- 22 that occurred as a result of the collision, that
- 23 distance was 522 feet.
- 24 Q Uh-huh.
- 25 A And then the, the incremental approximate length of the

HEIKKILA BY SCARPELLI

42

- 1 lead unit 9123 is 70 feet. So, added together, those
- 2 total about 2,251.
- 3 Q Okay.
- 4 A And then back to the point of impact in the middle of
- 5 the crossing we're in about 2,280 or thereabouts from
- 6 the point of impact which is between those two
- 7 intervals. Let me see if I can get more precise.
- 8 Q But how do you know that that's the point of impact,
- 9 just because they traveled that distance?
- 10 A It's approximate. I believe the policemen may have
- 11 concluded from their survey that it was in the range of
- 12 2,204 or 5. So it's within a range.
- 13 Q You're not saying that's the exact point, tenth of a
- 14 second of impact or second of impact?
- 15 A It's within -- I believe it's within that interval as I
- 16 previously testified.
- 17 Q Somewhere between 17:4148 and 17:4149?
- 18 A Yes.
- 19 Q What speed does the data event recorder show that the
- 20 train is traveling at the point of impact?
- 21 A It shows 42 at that point.
- 22 Q Do I understand correctly in reading these data event
- 23 recorders we come up from the bottom to go -- they read
- 24 up from the bottom?
- 25 A Well, in what regard? As far as chronologically, yes.

HEIKKILA BY SCARPELLI

43

- 1 Q Yes, that's the regard I had in mind. Okay. So, what,
- 2 say, ten seconds before impact, or, well, the speed
- 3 miles per hour here, if we just follow that down, that
- 4 will indicate what the data event recorder records as
- 5 the speed the train is traveling; correct?
- 6 A Yes, that's a recordation value.
- 7 Q What is the margin of error of a data event recorder in
- 8 terms of speed?
- 9 A I don't know about a, quote, margin of error. That
- 10 could vary. It could vary from -- widely. But
- 11 typically it's within a range -- For example, it's not
- 12 unusual to see circumstances where you may have two
- 13 event recorder downloads from the same train show a
- 14 slightly different speed at the simultaneous location
- 15 which we know would be physically impossible of a
- 16 couple, one or two miles per hour.
- 17 Q So, what would you say would be realistic margin of
- 18 error? Is there a margin of error that's known amongst
- 19 experts who read data recorders in terms of speed?
- 20 A Well, again, it's highly variable depending upon the
- 21 situation and the circumstances, but they're usually
- 22 within a couple of miles an hour.
- 23 Q So, when you say a couple, you mean two miles per hour?
- 24 A Typically.
- 25 Q Okay.

HEIKKILA BY SCARPELLI

44

- 1 A Again, we're talking event recorder?
- 2 Q Yeah.
- 3 A And that's assuming a properly functioning device and
- 4 proper wheel size and so forth.
- 5 Q Right, right. Do you have any information which would
- 6 lead you to believe that this was not a properly
- 7 functioning device?
- 8 A As far as the -- There are some anomalies that may be
- 9 attributable and probably are to the accident that would
- 10 not be consistent with simultaneous data in other
- 11 columns. For example, amperage after impact we have a
- 12 significant spike that's not typical -- those wouldn't
- 13 be typical values vis-a-vis the other data parameters
- 14 for that time.
- 15 Q Is there any information that you have that would lead
- 16 you to conclude that the speed is not accurate as
- 17 recorded by the data event recorder in this case?
- 18 A Again, within a resolution of the device of a couple
- 19 miles an hour, I believe it's approximately; correct,
- 20 yes.
- 21 Q Do you have any reason to believe that the wheel
- 22 measurement is incorrect?
- 23 A No.
- 24 Q Okay.
- 25 A Again, to the, to the extent of the resolution of the

EXHIBIT 4

1 UNITED STATES DISTRICT COURT
2 WESTERN DISTRICT OF WASHINGTON
3 AT SEATTLE

3 RUTH TREVINO LOPEZ, individually as)
surviving spouse, and as personal)
4 representative of the ESTATE OF BLAS) NO. C00-0311C.
ANTONIO LOPEZ, and beneficiaries, heirs,)
5 and surviving children BLAS LOPEZ, JR.,)
EDGAR LOPEZ, YULIKSA LOPEZ and)
6 ALEXANDER LOPEZ,)

7 Plaintiffs,)

8 vs.)

9 UNION PACIFIC RAILROAD COMPANY and)
BOISE CASCADE CORPORATION,)

10 Defendants.)

11 WOODROW DONALD SEWELL,) NO. C00-0441C

12 Plaintiff,)

13 vs.)

14 UNION PACIFIC RAILROAD COMPANY and)
15 BOISE CASCADE CORPORATION, and INES)
LOPEZ AND JANE DOE LOPEZ and their)
16 marital community, and RUTH TREVINO)
LOPEZ, individually and as personal)
17 representative of the ESTATE OF BLAS)
ANTONION LOPEZ,)

18 Defendants.)

19
20 DEPOSITION UPON ORAL EXAMINATION OF
21 ROBERT A. RYAN, VOLUME II

22 TAKEN ON: Monday, January 14, 2002

23 TAKEN AT: Shilo Inn
50 Comstock Street
24 Richland, Washington 99352

25 REPORTED BY: RENE' T. LaCOURSIERE, RMR, CCR
CCR NO. LA-CO-UR-T383DE

Page 6

1 BE IT REMEMBERED that on Monday,
2 January 14, 2002, at 12 55 p m., at Shilo Inn,
3 50 Cornstock Street, Richland, Washington, the
4 deposition of ROBERT A. RYAN, VOLUME II, was taken
5 before Rene' T. LaCoursiere, Registered Merit Reporter
6 and Notary Public. The following proceedings took
7 place

8 ROBERT A. RYAN, VOLUME II, being first duly sworn
9 to tell the truth,
10 the whole truth and
11 nothing but the truth,
12 testified as follows:

EXAMINATION

15 BY MR. SCARPELLI:

16 Q. Okay. Would you state your name, please?

17 A. Robert Alan Ryan.

18 Q. And do you still reside at the same address you did last
19 time I took your deposition?

20 A. Yes, I do.

21 Q. All right. And are you in the same position as the
22 manager of signal maintenance for Union Pacific?

23 A. Yes, I am.

24 Q. All right. And have you brought with you today all the

Page 7

1 documents that are set forth that were requested in the
2 Subpoena dated December 31st, 2001?

3 A. Yes, I have.

4 Q. Have you seen this Subpoena (indicating) before today's
5 date?

6 A. Yes, I have.

7 Q. Okay. And are the documents that are in front of me now
8 all the documents that you had that are responsive to
9 this Subpoena?

10 A. That's correct.

11 Q. Now, you have another -- a personal lawyer who's with
12 you here today. And what is his name?

13 MR. BUKEY: My name is David Bukey,
14 B-u-k-e-y

15 MR. THORNTON: I didn't hear

16 MR. SCARPELLI: David Bukey

17 MR. THORNTON: Okay

18 Q. (By Mr. Scarpelli) All right. And how were you
19 referred to Mr. Bukey?

20 A. Discussion with counsel.

21 MR. WACKERBARTH: Yeah, I'll just object to
22 the extent that it calls for privileged communications

23 Q. And when you say counsel, are you talking about
24 Mr. Wackerbarth?

25 A. Correct.

Page 8

1 Q. Okay. Is Union Pacific paying for Mr. Bukey's time?

2 MR. WACKERBARTH: I'll again object to the
3 extent it may be privileged

4 You can answer yes or no

5 A. Yes

6 Q. All right. And why are you having counsel, legal
7 counsel, for Mr. Bukey?

8 MR. BUKEY: I'm going to object to that to the
9 extent that it calls for attorney/client conferences

10 MR. SCARPELLI: Sure

11 MR. BUKEY: Privileges.

12 Q. (By Mr. Scarpelli) Don't tell me anything Mr. Bukey
13 told you. But why do you feel it necessary to have
14 personal counsel?

15 A. To --

16 MR. WACKERBARTH: And I'll object as well
17 to the extent that it calls for privileged
18 communications --

19 Q. You don't have to.

20 MR. WACKERBARTH: -- with me on this issue

21 MR. SCARPELLI: Yeah.

22 Q. (By Mr. Scarpelli) Don't tell me what anybody told you.
23 But why do you feel it's important for you to have your
24 own personal counsel here today?

25 A. To protect my interests

Page 9

1 Q. What do you mean by that?

2 A. To protect me from what I don't know

3 Q. Okay. What do you mean by that?

4 A. I'm not aware of the ramifications of this.

5 Q. Of what?

6 A. Of this deposition

7 Q. All right. And do you have a concern that there may be
8 criminal ramifications?

9 MR. BUKEY: I'll have the objection to the
10 extent it would call for a discussion with counsel

11 MR. SCARPELLI: Sure

12 Q. (By Mr. Scarpelli) Don't tell me anything they told
13 you. But are you concerned there could be criminal
14 ramifications?

15 MR. WACKERBARTH: Same objection on my part

16 Q. Go ahead

17 A. After discussion with counsel, I'm concerned

18 MR. WACKERBARTH: Yeah. Again, don't disclose
19 communications you've had with counsel

20 Q. Okay. And would you tell me when the first time that
21 you had any communication with Mr. Bukey? I'm not
22 asking for what was said, but when was the first time
23 you had any communication with or to, from him?

24 A. I believe last week. I don't have -- remember the exact
25 date

Page 10

1 Q. And that would be sometime during the week of January
2 the 7th?
3 A. Correct.
4 Q. Okay I'm going to try to confine my questions,
5 Mr Ryan, to events that have occurred since the last
6 deposition. I might wander a bit, but that's not my
7 intent
8 Have you received any reprimand from Union
9 Pacific?
10 A. No, I have not
11 Q. Have you received -- have you talked to anybody at Union
12 Pacific about what has occurred since October the 19th,
13 2001?
14 A. Yes, I've had discussions with my director.
15 Q. And --
16 A. Dale Hughes.
17 Q. And is Dale Hughes your supervisor?
18 A. Yes.
19 Q. And is he the supervisor in Salt Lake?
20 A. Correct.
21 Q. All right. He would be responsible for the entire
22 Western Region, correct?
23 A. That's correct.
24 Q. And what did Mr Hughes -- when did you have that
25 conversation with Mr Hughes?

Page 11

1 A. After talking to Mr. Wackerbarth.
2 MR. WACKERBARTH Again, no discussion of
3 communications you've had with me.
4 MR. SCARPELLI: Yeah.
5 Q. (By Mr. Scarpelli) When did you have that conversation
6 with Mr. Hughes?
7 A. After I was asked what happened to the MD boards and
8 related that information, I called Mr Hughes.
9 Q. Okay And that would have been you were asked about
10 what happened to the MD boards on December the 12th or
11 13th, 2001, correct?
12 A. Correct.
13 Q. All right. And what did you tell Mr Hughes?
14 A. I told Mr Hughes what I had done and that there was an
15 issue with that
16 Q. And what did Mr. Hughes tell you?
17 A. He asked if I thought -- or asked if I was doing what I
18 thought was correct
19 Q. If you were doing what you thought was correct?
20 A. Yes
21 Q. And did Mr. Hughes say anything else to you?
22 A. He said that that's what you need to do, is what's
23 correct at the time.
24 Q. And this is after December the 12th or 13th, 2001?
25 A. Yes

Page 12

1 Q. Did Mr Hughes say anything else to you?
2 A. Said just to tell you what I know
3 Q. Tell who what you know?
4 A. The attorneys.
5 Q. How did -- did you call Mr Hughes on or about
6 December 13th or 14th, 2001?
7 A. Yes
8 Q. How did you call him, from where?
9 A. It was either La Grande or from my home
10 Q. What's in La Grande?
11 A. I was working in the La Grande area at the time
12 Q. How often do you talk to Mr. Hughes?
13 A. We have weekly calls every Monday morning and then two
14 to three times a month I might call him.
15 Q. Have you talked to Mr Hughes about these events since
16 the first occasion you talked to him?
17 A. Yes, I have
18 Q. And when was that, the second time you talked to him?
19 A. After I decided on counsel
20 Q. After you decided that you needed counsel?
21 A. Yes
22 Q. All right. And what did you tell Mr Hughes?
23 A. I informed him that I was being provided counsel
24 Q. And you told him that Union Pacific was paying for your
25 attorney, personal attorney?

Page 13

1 A. Yes.
2 Q. And who made the decision at Union Pacific that they
3 would pay for your personal attorney?
4 A. I do not have that information.
5 Q. What did Mr. Hughes say to you when you told him that?
6 A. He seemed surprised, I guess.
7 Q. Why? Why was he surprised?
8 MR. WACKERBARTH I'll just object to lack of
9 foundation.
10 Q. Yeah, go ahead.
11 A. I don't know
12 Q. Okay
13 A. He didn't say
14 Q. What did he say?
15 A. Just that -- as he told me before, that I needed to just
16 do what -- answer the questions to the best of my
17 ability and that was it
18 Q. When did this second conversation with Mr Hughes take
19 place?
20 A. Would have been possibly last week
21 Q. Has there been a third conversation with him about these
22 events?
23 A. I talked to him last night.
24 Q. Where did you call him from last night?
25 A. From home

Page 46

1 A. Correct
 2 Q And at that time you moved the shunts 235 feet further
 3 from the crossing, correct?
 4 A That's correct. Rather than do nothing, I moved them
 5 out.
 6 Q Yeah.
 7 A Until I could see if there was a continuing problem.
 8 Q All right. Then you went back to the crossing -- well,
 9 were there going to be -- did you know whether there
 10 would be any train traffic across SR 124 from the late
 11 afternoon when you left the crossing until 6 a.m. the
 12 next morning?
 13 A. I'm sure there would be.
 14 Q Why did you -- did you go back at 6 a.m. in the morning
 15 and do the installation because you didn't want anybody
 16 to see you?
 17 A. Yes.
 18 Q And did you figure that if you went at 6 a.m. there
 19 probably wouldn't be anybody around the crossing in
 20 preparation for the day's events that were going to
 21 occur there?
 22 A. Correct.
 23 Q And that would be in connection with this particular
 24 case?
 25 A. Right.

Page 47

1 Q And so you did the change of the MD boards in the case
 2 at a time when you thought nobody would see you,
 3 correct?
 4 A. Correct.
 5 Q And then -- was there anybody with you at the time?
 6 A. No.
 7 Q. And then how did you -- where did you go after you
 8 pulled the 1987 and '86 boards out and replaced them
 9 with 1992 boards?
 10 A. I drove to Kennewick.
 11 Q. And what did you do there?
 12 A. Had breakfast.
 13 Q. With whom?
 14 A. By myself. And after that I inspected crossings in
 15 Kennewick.
 16 Q And when did you come back to the scene on SR 124?
 17 A. Just prior to the time that was set for meeting.
 18 Q. Prior to the time that was set for the inspection by
 19 Mr. Farnham of the signal case?
 20 A. Correct.
 21 Q. All right. And then you had -- you came to the scene on
 22 one of those high-rail vehicles, right?
 23 A. I --
 24 Q. Your vehicle has the capacity to go down a railroad
 25 track, right?

Page 48

1 A. Yes, it does.
 2 Q And is that how you got to the railroad track from
 3 Kennewick?
 4 A. No.
 5 Q Is that how you got there the morning when you put --
 6 when you changed the signals?
 7 A. No.
 8 Q Okay. How long after you got to the scene on October
 9 the 19th did Mr. Farnham arrive and myself?
 10 A. I believe you may have already been there in the lower
 11 parking lot, by the packing company parking lot.
 12 Q And did you have a meeting with Mr. Wackerbarth before
 13 we were allowed to look in the signal case up at the
 14 crossing?
 15 A. I had -- I'm sure that I spoke with Mr. Wackerbarth,
 16 yes.
 17 Q And did you tell him what you had done the night -- that
 18 morning?
 19 A. No, I did not.
 20 Q Okay. Did you keep it from him purposefully?
 21 A. Yes.
 22 Q And did you tell him that you -- you probably told him
 23 what you had done to the signal case in terms of
 24 cleaning it up and that type of thing, right?
 25 A. I do not believe we discussed that. I'd given him the

Page 49

1 copies of the battery cards and the RX and phase sheets.
 2 Q When Mr. Farnham was allowed to look in the signal case
 3 did you help him identify the serial numbers?
 4 A. Yes, I did.
 5 Q And you, in fact, read off some serial numbers to him,
 6 did you not?
 7 A. Yes, I did.
 8 Q In fact, you read off the serial numbers on the two
 9 MD boards that you had put in the signal case earlier
 10 that morning, correct?
 11 A. Yes.
 12 Q Okay. And did you know when you were reading off those
 13 numbers that Mr. Farnham and I would believe that those
 14 were the numbers that you had referred to the previous
 15 day in your deposition?
 16 MR. WACKERBARTH: I'll object to the form.
 17 Q Go ahead.
 18 A. Again, I made a snap decision that the boards had not
 19 been in there and that it would be better to raise it up
 20 to the latest ESBs and not have the question to whether
 21 they were in there at the time of the accident.
 22 Q My question --
 23 A. So --
 24 Q My question was, did you intend that we should think
 25 that the '92 boards were in there, the '92 boards that

Page 86

1 think rather than have me do that while everybody
2 waits I'll just turn it over to somebody else for a
3 while
4

EXAMINATION

BY MR. LEIPHAM

7 Q I'm not sure I understand yet why you waited until
8 November 19 and 20 to send in the two motion detector
9 cards that you removed from the case on the 19th of
10 October of 2001?
11 A. I waited until I had installed the boards that I had
12 that I knew were in proper order that were
13 Q Compliant?
14 A. Compliant. And then I sent a shipment in to have them
15 all brought up to the latest ESB
16 Q Okay And those were compliant both with 89-1 and the
17 2001 ESB; is that correct?
18 A. That's correct.
19 Q. Now, when you sent in those two boards to Harmon, the
20 ones that you'd removed on October 19, 2001, what was
21 your understanding of what was going to be done to those
22 boards?
23 A. They would be brought up to the latest ESB level
24 Q Did you understand when you sent those in that the work
25 that was required to be done to comply with ESB 89-1

Page 88

1 had removed on October 19th?
2 A. No, I did not.
3 Q On Exhibit 7, when you sent those boards to Harmon, does
4 it tell Harmon to make corrections for 89-1, is that
5 specified anywhere on those forms?
6 A. No, it is not.
7 Q And why is that?
8 A. It's specified to bring it up to ESB 00-002.
9 Q So your understanding was telling them to bring it up to
10 that level would result in them checking the boards and
11 making sure that all -- that not only that ESB, but all
12 prior ESBs would be complied with?
13 A. That's correct
14 Q Now, the interconnect board that you were requested to
15 get pictures of, did you actually take any pictures of
16 it?
17 A. No, I did not.
18 Q. Okay And why hasn't that been done?
19 A. Once I removed the board from the PMD, then I figured
20 I could produce the board to whoever wanted to look at
21 it.
22 (INTERRUPTION AT DOOR)
23 MR. SCARPELLI: Yes
24 MR. SCRIBNER: Come in.
25 (3 33 RECESS 3:35)

Page 87

1 would be done on those boards?
2 A. Yes
3 Q And what was your understanding of the nature of that
4 work?
5 A. A capacitor would be removed and a resistor installed
6 Q And would it be fair to say -- well, strike that.
7 Was it your understanding that the potential
8 defect in these boards that caused or could cause a
9 short signal was a leak in that capacitor that was to be
10 taken out?
11 MR. WACKERBARTH I'll object to the form
12 A. I do not recall the exact wording of the ESB as far as
13 leak or short
14 Q. All right. You knew, you understood, that there was
15 something potentially wrong with the capacitor and
16 that's why it would be removed, is that correct?
17 A. Correct.
18 Q. Did you have an understanding that the capacitor
19 could -- whether the capacitor could be checked to
20 determine if it was in fact defective before it was
21 removed from the board as part of the modification?
22 A. I'm sure it could be, yes
23 Q Did you make any attempt to have Harmon preserve the
24 capacitors that were going to be taken -- that you knew
25 were going to be taken off of those two boards that you

Page 89

1 MR. LEIPHAM. Back on the record
2 I don't have any other questions
3 Thanks
4

EXAMINATION

BY MR. SCRIBNER

7 Q Mr Ryan, we deposed Mike Hughes earlier today and he
8 told us about an incident involving a school bus out at
9 this crossing. His recollection was that you called him
10 to go out and check the signals because it was reported
11 by I think a bus driver that he/she had to stop the bus
12 abruptly and some kids got bounced around Do you
13 recall anything about that?
14 A. After speaking with Mr Hughes he reminded me of that
15 incident He -- I don't recall specifics, I don't
16 recall dispatching him out to look at it
17 I do remember that the report was a report
18 that something had happened a week ago We did respond,
19 tested the crossing, and no defects were found with the
20 crossing pair as I remember Mr Hughes had
21 conversations with the school district as to what we had
22 found
23 Q When did this take place?
24 A. I do not remember when it was.
25 Q If you recall, was it before or after the accident